

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tracy Alan Zornes,

Case No. 16-cv-1730-PJS-KMM

Petitioner,

ORDER

v.

Michelle Smith,

Respondent.

Tracy Alan Zornes, OID# 129641, MCF-Oak Park Heights, 5329 Osgood Ave N., Stillwater, MN 55082, pro se

Lori H. Conroy, Clay County State's Attorney's Office; James B. Early and Matthew Frank, Minnesota Attorney General's Office; counsel for respondent

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Katherine Menendez dated October 17, 2016. No objections have been filed to that Report and Recommendation in the time period permitted. Based on the Report and Recommendation of the Magistrate Judge, on all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. The respondent's motion to dismiss (ECF No. 10) is **DENIED**.
2. This matter is stayed and held in abeyance while Mr. Zornes seeks relief for the claim articulated in Ground Thirteen of his petition in state court.
3. Mr. Zornes must file a petition for post-conviction relief on his unexhausted claim in the appropriate State of Minnesota district court within 30 days of this order.

4. Within 30 days of a final decision by the state courts concerning his previously unexhausted claim, Mr. Zornes shall request that the stay in this matter be lifted. He shall supplement the record in this case with all state court records and decisions concerning this previously unexhausted claim.

Date: 11/8/16

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge